

E-Filed 1/22/07

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

YANZHENG XU,

Plaintiff,

v.

ALBERTO GONZALES, United States Attorney
General, et al.,

Defendants.

Case Number C 06-7838 JF (RS)

ORDER TO SHOW CAUSE

[re: doc. no. 1]

Plaintiff Yanzheng Xu brings this suit pursuant to 8 U.S.C. § 1447(b), alleging excessive delay in the processing of her application for naturalization.

An applicant for citizenship must meet various statutory requirements, including sufficient periods of residency and physical presence and “good moral character.” 8 U.S.C. § 1427. In determining whether an applicant meets these requirements, the Attorney General or his designee may conduct both a “personal investigation” and an “examination” of the applicant. *See* 8 U.S.C. §§ 1443(a), 1446(a)-(b). This process includes a criminal background check by the Federal Bureau of Investigation. *Khelifa v. Chertoff*, 433 F. Supp. 2d 836, 838-39 (E.D. Mich. 2006). If a decision to grant or deny an application for naturalization is not made “before the end of the 120-day period after the date on which the examination is conducted,” the applicant may

1 file suit in the United States district court for the district in which the applicant resides. 8 U.S.C.
2 § 1447(b). "Such court has jurisdiction over the matter and may either determine the matter or
3 remand the matter, with appropriate instructions, to the Service to determine the matter." *Id.*

4 Plaintiff alleges that her examination took place on April 12, 2006 and that a decision on
5 her application was not made within 120 days thereafter, and in fact has not been made even
6 though nine months have passed since the date of the examination. Plaintiff requests that this
7 Court exercise its authority to adjudicate her application or to remand to Defendants with
8 instructions to process her application immediately.

9 The Clerk of the Court shall serve a copy of Plaintiff's complaint and this Order on
10 counsel for Defendants. Defendants are hereby ordered to SHOW CAUSE, in writing and within
11 sixty (60) days, why Plaintiff's request should not be granted. Plaintiff may file a response
12 within twenty (20) days after receipt of Defendants' filing. The matter thereafter will be taken
13 under submission without oral argument unless the parties otherwise are notified by the Court.

14 The order dated December 21, 2006, setting an initial case management conference and
15 ADR deadlines is VACATED.

16 IT IS SO ORDERED.

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19 DATED: 1/22/07

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22 JEREMY FOGEL
23 United States District Judge
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1 Copies of Order served on:

3 Counsel for Plaintiff:

4 Justin Fok jfok@jclawoffice.com

5 Counsel for Respondents:

6 Office of the United States Attorney
7 150 Almaden Blvd., Suite 900
8 San Jose, CA 95113